

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

ROBERT WAYNE SMITH,	)	
	)	
Petitioner,	)	
	)	
v.	)	1:06CV489
	)	
	)	
THEODIS BECK, Secretary of	)	
the Department of Correction,	)	
	)	
Respondent.	)	

**O-R-D-E-R**

On October 2, 2006, in accordance with 28 U.S.C. § 636(b), the Recommendation of the United States Magistrate Judge was filed and notice was served on the parties in this action and a copy was given to the court.

Within the time limitation set forth in the statute, Petitioner objected to the Recommendation.

The court has appropriately reviewed the portions of the Magistrate Judge's report to which objection was made and has made a de novo determination which is in accord with the Magistrate Judge's report. The court hereby adopts the Magistrate Judge's Recommendation.

**IT IS HEREBY ORDERED AND ADJUDGED** that Respondent's motion for summary judgment [Pleading no. 6] be **GRANTED**, and that this action be, and is hereby, dismissed with prejudice. Finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is not issued.

This the day of September 19, 2007

/s/ N. Carlton Tilley, Jr.  
United States District Judge